

ATTACHMENT 1

Proposed Revisions to the Written Decision in Docket 02-0160

I) Penalties

In order to adopt the changes to count each violation of Section 13-514 separately, I recommend adopting a modified version of Z-Tel's proposed changes in its Petition for Review. Since some material issues pertaining to calculating penalties are better left for resolution in a follow-up docket as suggested by the ALJ (see ALJ Hayes' Cover Memo, April 23, 2002, pg. 4), I have remained silent on the issue of whether Ameritech should be fined for each defective line loss notification sent to Z-Tel after the 48-hour notice was provided. To this end, I recommend the following changes be made to Section III(D)(2)(h) "Penalties" starting on page 22 of the Written Decision:

"Z-Tel requests in its amended Complaint that the Commission impose a penalty of up to \$30,000 or 0.00825% of Ameritech's gross intrastate annual telecommunications revenue, whichever is greater, for each violation of the Act, pursuant to the penalty provisions contained in Sections 13-516 and 5-202 of the Act.

The Commission finds that the imposition of penalties under Section 13-516 of the Act is ~~not~~ appropriate. The language of Section 13-516, states that:

Notwithstanding any other provision of this Act, for a second and any subsequent violation of Section 13-514 committed by a telecommunications carrier after the effective date of this amendatory Act of the 92nd General assembly, the Commission may impose penalties of up to \$30,000 or 0.00825% of the telecommunications carrier's gross intrastate annual telecommunications revenue , whichever is greater, per violation...The second and any subsequent violation of Section 13-514 need not be of the same nature or provision of the Section for a penalty to be imposed...Each day of a continuing offense shall be treated as a separate violation for purposes of levying any penalty under this Section...The period for which the penalty shall be levied shall commence on the day the telecommunications carrier first violated Section 13-514 or on the day of the notice provided to the telecommunications carrier pursuant to subsection (c) of Section 13-515, whichever is later... (220 ILCS 5/13-516(a)(2)).

Prior to this proceeding, Ameritech has not been found in violation of Section 13-514 since the effective date of the amendatory Act. In other words, the Commission has not found Ameritech to have committed an action prohibited by Section 13-514 since July, 2001. However, under the plain language of the statute, Ameritech is subject to penalties under Section 13-516(a)(2) for each violation of Section 13-514 after the first violation. In this instance, the Commission has found that Ameritech has committed four separate violations of Section 13-514 of the Act, and is subject to penalties under Section 13-516(a)(2) for the 2nd, 3rd, and 4th violations of Section 13-514. The Commission will initiate a proceeding pursuant to Section 766.410 to identify the appropriate fines for these violations. Therefore, based on the plain language of the statute, penalties cannot be imposed under Section 13-516. The Commission makes clear, however, that in any proceeding after this that finds Ameritech to be in violation of Section 13-514, penalties can be imposed pursuant to Section 13-516(a)(2).

II) Parity Requirement

I support revising the parity language as recommended by Z-Tel in its Petition for Review (with a few, minor grammatical changes). This would entail the following:

1. Amending Section III(D)(1) by inserting the following two paragraphs immediately before the final paragraph in Section III(D)(1):

“Any change to an end-user’s (Ameritech and Z-Tel customers) service is made in a database called ASON (Ameritech Service Order Negotiation System). Once that information is typed into the ASON database and the record change is entered, an Order is generated to provision services to the customer. ASON is the central processing database that is used to enter Change Orders to customers’ service for both Ameritech Retail and Wholesale orders. When a change order is made to an Ameritech customer’s record in ASON, a “mirror” copy of that data file is delivered immediately to several Ameritech-retail operating units, including a downstream system in Ameritech’s retail operations which it refers to as the Service Order Interface. When the ASON record is changed due to a customer’s changing his/her service, ASON will automatically distribute a mirror copy of that data record to the Service Order Interface which will in turn generate additional copies downstream so that other Ameritech departments have it. Ameritech’s retail operations receive a mirror copy of the ASON record, while Z-Tel only receives the 836 LLN.

“The OSS information that is provided to Ameritech’s retail operations is superior to the limited information provided to Z-Tel in an 836 Line Loss Notification. The 836 Line Loss Notification give to Z-Tel contains essentially the telephone number, and the date of disconnect. However, the mirror record of the ASON file that is provided to Ameritech’s retail operations contains significantly more information that can be useful in serving customers.”

2. Amending Section III(D)(2)(a) "Parity Requirement" as the following language illustrates:

"Z-Tel should, however, have the option of receiving ~~a~~ more detailed OSS information about disconnected customers, ~~notice,~~ containing the same data fields as are currently sent to Ameritech's retail business units. ~~that currently sent to Ameritech Winback in the enhanced LLN.~~ As a permanent solution, Z-Tel requests that Ameritech establish systems that will provide Z-Tel with the identical and instantaneous data from Ameritech's ASON system that Ameritech provides its own retail databases. Z-Tel requests that this be in place by July 1, 2002. Staff supports a modified form of this request. In its Brief, Staff recommends that at a minimum, Ameritech should make available the option to Z-Tel to receive the same information as Ameritech provides to its retail organization today in form of the loss disconnect report in addition to receiving the 836 LLN.

Ameritech argues that this relief was not asked for or even mentioned in the complaint or amended complaint and for that reason, it cannot be granted. We disagree. Z-Tel requests, under Count I, that Ameritech be enjoined from Winback marketing "until such time as Ameritech provides identical Line Loss Notification to Z-Tel as it provides to its own retail operations." (Amended Complaint at 14).

Ample evidence was provided at hearing showing that the enhanced LLN that Ameritech Winback receives contains more data fields and is generated at an earlier stage than the notice sent to Z-Tel. In addition, the evidence shows that Ameritech provides copies of the records generated by the ASON database to Ameritech's retail business units. These ASON records are the measure by which to determine whether Ameritech is providing nondiscriminatory access to its OSS. Until such time as Ameritech provides CLECs the option of receiving a mirror record of the ASON data record that is delivered to the Service Order Interface, ~~an enhanced notice,~~ Ameritech Winback personnel are directed to only use the 836 LLN. CLECs rely on 836 notices for marketing as well as billing. While we believe that it would be inappropriate to require Ameritech to switch to using 836 notices for billing purposes, we do find that it would be beneficial for CLECs and customers for CLECs to have the option to receive ~~a~~ more detailed OSS information about changes to customer's records. LLN.

Once Ameritech has in place a system where Z-Tel can choose between the 836 LLN and/or a notice that contains as much information as that currently sent to Ameritech's retail business unit, ~~Winback,~~ then Ameritech Winback may use the enhanced LLN again. Ameritech is directed to make this option available to Z-Tel by July 1, 2002." ~~We clarify, however, that we are not adopting Z-Tel's proposal to receive instantaneous data from Ameritech's ASON system, but that Ameritech will develop another LLN that will contain more information.~~

III) Z-Tel's Role

The final paragraph of Section III(D)(2)(i) "Performance Measure (MI 13)" on page 24 should be amended by inserting the words "Z-Tel and" between the terms "reviewed by" and "Staff". The final sentence, as amended, should read as follows:

"Ameritech is directed to provide reports, to be reviewed by Z-Tel and Staff, describing its efforts in correcting the problems with MI 13."

IV) Findings and Orderings Paragraphs

Consistent with the amendments above, the Findings and Orderings paragraphs would be amended as follows:

(8) in this proceeding, penalties may ~~not~~ be imposed on Ameritech pursuant to 13-516(a)(2);

(10) the Commission should initiate a proceeding against Ameritech to determine ~~whether the~~ appropriate amount of penalties to be assessed against Ameritech under Section 13-516 for violating Section 13-514, and ~~Commission should seek the imposition of civil penalties~~ under Sections 13-304 and 13-305 of the Act for the failure of Ameritech to comply with Section 13-801 of the Act;

IT IS FURTHER ORDERED by the Illinois Commerce Commission that a proceeding be initiated, with the proper notice, against Ameritech to determine the appropriate amount of penalties to be assessed against Ameritech under Section 13-516 for violating Section 13-514, and ~~whether the Commission should seek the imposition of civil penalties~~ under Sections 13-304 and 13-305 of the Act for the failure of Ameritech to comply with Section 13-801 of the Act.